

In the Matter of License No. 37217
Issued to: CECIL JACOBS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

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CECIL JACOBS

This review has been made in accordance with Title 46 Code of Federal Regulations 137.35

By order dated 11 June 1964, an Examiner of the United States Coast Guard at Port Arthur, Texas, suspended the license of the person charged upon finding him guilty of violation of a regulation. The specification found proved alleges that while serving as a pilot on board the United States M/V TRI CITIES, on or about 3 May 1964, the person charged wrongfully gave a short blast of the whistle, signifying a port to port passing, while not in sight of the other vessel, thereby contributing to a collision in the Intracoastal Waterway between the TRI CITIES tow and the tow of M/V MOBIL ST. PAUL (33 CFR 80.3).

At the hearing, the person charged elected to act as his own counsel and entered a plea of guilty to the charge and the specification.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved by pleas.

FINDINGS OF FACT

On 3 May 1964, the person charged was acting as pilot of M/V TRI CITIES, pushing a loaded tank barge in the Intracoastal Waterway. TRI CITIES is an uninspected towboat. No licensed pilot is required but when the vessel is operating with an inspected tank barge, loaded and unmanned, a certified tankerman must be aboard.

The person charged holds a motorboat operator's license and a U.S. Merchant Mariner's Document endorsed for tankerman rating.

The Examiner's order went only to the license, not to the document.

OPINION

The reason for calling the case up for review is the question of jurisdiction.

The person charged was not serving under authority of his motorboat operator's license. The offense alleged was a violation of a regulation.

The regulation violated here was adopted under authority of section 2 of the Act of June 7, 1897, (30 Stat. 102; 46 U.S. Code 157). This is not a regulation pursuant to any section of Title LII of the Revised Statutes. It is an essential condition for jurisdiction, when there is no service under authority of the license, that the act alleged by a violation of a section of that title of the Revised Statutes or of a regulation issued pursuant thereto.

It is true that the wording of 46 CFR 137.01-40 appears to sanction a proceeding as in the instant case. It is also true that Appeal Decision No. 491 held that a violation of 33 CFR 80.1 could be the basis for charges under R.S. 4450 even if service under authority of a license was not established.

The rationale of Decision No. 491 was that the kinship of Section 2 of the Act of June 27, 1897, 30 Stat. 102, to R.S. 4412 was such that regulations promulgated under authority of the Act could be assimilated to regulations promulgated under authority of Title 52 of the Revised Statutes. Since then, however, R.S. 4412 has been repealed in toto (Section 3 of the Act of March 28, 1958, P.L. 85-350, 72 Stat. 49). This repeal severed the last connection between the Rules of the Road and Title 52 of the Revised Statutes.

46 CFR 137.01-40, in its reference to regulations in Chapter I of Title 33 CFR, must be construed in light of the wording of the Statute, R.S. 4450, which speaks of "acts in violation of any of the provisions of title 52 of the Revised Statutes or of any of the regulations issued thereunder." With this limitation the reference can only be to those regulations in Titles 33 and 46 CFR which stem from authorization in Title 52 of the Revised Statutes. (It is contemplated that a change in this regulation will clarify its application.)

In the decision on Appeal No. 1427 I held that "jurisdiction over the violations of Rules of the Road must be predicated upon service under authority of the license."

That case bore some resemblance to this. The Appellant was charged with violating a regulation in 33 CFR 95. His tug was uninspected and needed no licensed pilot but did require a tankerman. He held only an inland-mate's license which qualified him to serve as a tankerman. I upheld the jurisdiction on the

grounds that the law required that a tankerman be aboard and that the indivisible license was the only authority for him so to serve.

Here we do not know whether the person charged was the tankerman required by law because there is no information as to the manning of the vessel. Assuming that he was, he was serving under authority of his tankerman's document, not on his motorboat operator's license.

CONCLUSION

I conclude that there was no jurisdiction to proceed against the motorboat operator's license of the person charged.

ORDER

The order of the Examiner dated at Port Arthur, Texas, on 11 June 1964, is VACATED; the findings are SET ASIDE; and the charges are DISMISSED.

E. J. ROLAND
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 25th day of August 1964.